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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,382	01/05/2004	Ronald R. Soto	51662/TJD/N210	4323

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EXAMINER

LINDSEY, RODNEY M

ART UNIT PAPER NUMBER

3765

DATE MAILED: 01/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application N .</b>	<b>Applicant(s)</b>	
	10/752,382	SOTO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Rodney M. Lindsey	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/1/4</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the loop and pile fasteners of claim 7 and the air bladder of claim 15 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

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pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 18 and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is not understood how the two cylindrical ends of pin 36 may be inserted past the portion 38 of the frame.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 8-11, 16, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kastendieck et al. Note frame assembly 16, mount assembly 50, adjustment strap assembly 120 and neck pad assembly 152, the frame assembly generally C-shaped with forehead portion at 112 and cheek end portions 175. With respect to claim 2 note forehead pad 177. With respect to claim 3 note cheek pads 179. With respect to claim 4 as the pads teach all the structure claimed they are seen to be as removably attached as the instant pads. With respect to claims 8 and 9 note the use of a sheepskin leather per column 6, line 45. With respect to claim 10 note the use of foam per column 6, line 36. With respect to claim 11 the conforming foam per column 6, lines 39-41 inherently functions to adapt to facial features. With respect to claim 16 note the use of plastic per column 8, line 21. With respect to claim 19 note the surface at 112, 114 per Figures 4, 5. With respect to claim 20 note the gap as shown in Figure 5 between pads 177 and

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179.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kastendieck et al. in view of Marietta et al. Kastendieck et al. do not teach the use of snaps to inter-engage the pad support or frame and the pads. Marietta et al. teach old the use of snaps 20, 21 to inter-engage a pad support or helmet shell and pads. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the frame and pads of Kastendieck et al. with the snaps 20, 21 of Marietta et al. to achieve the advantage of detachably inter-engaging the frame and pads to permit replacement of the pads.

8. Claims 7 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kastendieck et al. in view of Mattes. With respect to claim 7 Kastendieck et al. do not teach loop and pile fasteners to inter-engage the frame and pads. Mattes teaches old the use of loop and pile fasteners to inter-engage a frame and pad 18. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the frame and pads of Kastendieck et al. with the loop and pile fasteners of Mattes to achieve the advantage of detachably inter-engaging the frame and pads to permit replacement of the pads. With respect to claim 22 Kastendieck et al. do not teach a protective pad for the top of a user's head. Mattes at 26 teaches such a pad for the crown of a user's head. It would have been obvious to one of ordinary skill in

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the art at the time of the invention to provide the facemask assembly of Kastendieck et al. with the crown pad 26 of Mattes to achieve the advantage of protecting the crown of a user's head.

9. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kastendieck et al. in view of Arai. Kastendieck et al. do not teach polyurethane foam for the pads or the pads forming first and second portions. Arai teaches old the use of polyurethane foam and first and second portions for forming a pad as at 16a, 16b. It would have been obvious to one of ordinary skill in the art at the time of the invention to form the pads of Kastendieck et al. of the polyurethane foam and of first and second portions in the manner of Arai to achieve the advantage of controlling the impact absorption characteristics of the pads. The particular density, thickness and compression values of the pad would have been considered obvious matters of choice and design determined through routine experimentation to obtain a desired impact absorption characteristic.

10. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kastendieck et al. in view of Hirsh. Kastendieck et al. do not teach pads comprised of an air bladder. Hirsh teaches old to form pads 50 of an air bladder. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the pads of Kastendieck et al. with the air bladders at 50 of Hirsh to achieve an alternative means of cushioning the frame.

11. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kastendieck et al. in view of Sydor. Kastendieck et al. do not teach the use of nylon 6/6 in forming the frame assembly. Sydor teaches old the use of nylon 6/6 in forming a body conforming frame member 30. It would have been obvious to one of ordinary skill in the art at the time of the invention to form the frame assembly of Kastendieck et al. with the nylon 6/6 of Sydor to achieve the

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advantage of enabling both stiffness and flexibility for the frame assembly.

12. Claims 1, 18, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aitchison in view of Kastendieck et al. Aitchison shows a generally C-shaped frame assembly 8, 10, 17, a mount assembly b' and an adjustment strap assembly 18, the frame assembly hinged as at 9. Aitchison does not teach a neck pad assembly. Kastendieck et al. teach old the use of a neck pad assembly 152. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the facemask assembly of Aitchison with the neck pad assembly 152 of Kastendieck et al. to achieve the advantage of enhancing the comfort of the user of the facemask assembly. With respect to claim 19 note the rounded surfaces of the frame of Aitchison.

### ***Conclusion***

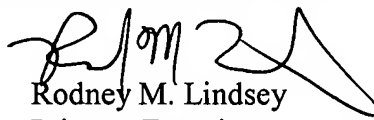
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note particularly, the padded frames of Turner, Chafitz et al., Goodyear, De Simone and Dobbie et al. and the hinge construction of Splaine.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (571) 272-4989. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Rodney M. Lindsey  
Primary Examiner  
Art Unit 3765

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